

1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2
3 In the Matter of)
4)
5 Frederick John LaVergne for Congress) MUR 7104
6 and Leonard Marshall)
7 in his official capacity as treasurer)
8)

9
10 **SECOND GENERAL COUNSEL'S REPORT**

11
12 **I. ACTIONS RECOMMENDED**

13 (1) Take no further action as to Frederick John LaVergne for Congress and Leonard
14 Marshall in his official capacity as treasurer (the "Committee"); (2) issue a letter of caution;
15 (3) approve the appropriate letters; and (4) close the file.

16 **II. INTRODUCTION**

17 The Commission previously found reason to believe that the Committee, the principal
18 campaign committee for Frederick John LaVergne's 2016 campaign for New Jersey's 3rd
19 Congressional District, violated 52 U.S.C. § 30104(a), (b)(4), and 11 C.F.R. § 104.3(a), (b) by
20 failing to report receipts and disbursements.¹ The Commission found that the Committee had
21 leased two campaign offices, but it had disclosed disbursements and receipts of only \$600 for the
22 entire 2016 election cycle.² The Committee, which did not respond to the Complaint, did
23 respond to the Commission's findings. It maintained that LaVergne intentionally raised and
24 spent less than \$5,000 to stay below the candidate reporting threshold.³ The Office of the

¹ Cert., MUR 7104 (May 24, 2017). On the same date, the Commission also found no reason to believe that LaVergne personally violated 52 U.S.C. § 30104(a) and either dismissed or found no reason to believe as to other allegations relating to the adequacy of disclaimers on the Committee's website. *Id.*

² Factual and Legal Analysis at 3-4, MUR 7104.

³ See Committee Resp. at 5, MUR 7104 (Sept. 11, 2017) ("Committee Resp.").

General Counsel ("OGC") investigated to determine the Committee's receipts and disbursements for the 2016 election cycle, including details regarding the Committee's campaign offices.

III. RESULTS OF INVESTIGATION⁴

A. LaVergne's 2016 Campaign and Previous Campaigns

LaVergne ran for Congress in 2012 as an Independent, in 2014 as the nominee of a minor political party, and in 2016 as the Democratic Party nominee.⁵ LaVergne did not file a Statement of Candidacy or file any disclosure reports with the Commission in 2012 or 2014, and he asserts that these "protest campaigns spent only nominal sums and stayed below the \$5,000 reporting threshold."⁶

On March 8, 2016, LaVergne filed a Statement of Candidacy and a Statement of Organization for the Committee.⁷ LaVergne states that, based on assurances of support he

⁴ Respondents, through LaVergne's counsel, submitted several documents regarding LaVergne in connection with the investigation. See Committee Resp.; Committee Resp., Exh. A, MUR 7104, (Oct. 9, 2017) ("Committee Resp. #2"); Committee Resp., MUR 7104 (Dec. 1, 2017) ("Committee Resp. #3"); Committee Resp., MUR 7104 (Apr. 18, 2018) ("Committee Resp. #4"). We also received documents from Kathryn Drennen of the Midwest Compliance Group and Stephanie Mellinger of the Mellinger Group, both of whom worked for the Committee in the early stages of the campaign. See E-mails from Stephanie Mellinger, Mellinger Group, to Kimberly Hart, OGC (Aug. 6, 2017); E-mails from Stephanie Mellinger, Mellinger Group, to Kimberly Hart, OGC (July 25, 2018); E-mails from Kathryn Drennen, Midwest Compliance Group, to Kimberly Hart, OG (July 31, 2017); E-mails from Kathryn Drennen, Midwest Compliance Group, to Kimberly Hart, OGC (July 20, 2018); E-mails from Kathryn Drennen, Midwest Compliance Group, to Kimberly Hart, OGC (July 20, 2018); E-mails from Kathryn Drennen, Midwest Compliance Group, to Kimberly Hart, OGC (July 24-25, 2018); see also Report of Investigation, Stephanie Mellinger, The Mellinger Group (July 24, 2018) ("Mellinger ROI"); Report of Investigation, Kathryn Drennen, Midwest Compliance Group (July 24, 2018) ("Drennen ROI").

⁵ Committee Resp. at 1. A Facebook page the Committee used in 2016 and a separate website indicate that LaVergne announced a 2018 candidacy for New Jersey's Third Congressional District, but it is not clear whether he was seeking the Democratic nomination or intended to run as an Independent candidate. See Frederick John LaVergne for Congress-Home-Facebook, <https://www.facebook.com/FrederickJohnLaVergneForCongress/> (last visited Aug. 21, 2018) and <http://fjl2018.com/>. LaVergne did not file a 2018 Statement of Candidacy with the Commission, and his name did not appear on the ballot for the 2018 Democratic primary election. See https://ballotpedia.org/Frederick_John_LaVergne (last visited Aug. 21, 2018).

⁶ Committee Resp. at 1.

⁷ Statement of Candidacy, Frederick John LaVergne (Mar. 8, 2016); Statement of Organization, Frederick John LaVergne for Congress (Mar. 8, 2016).

1 received from the Democratic Congressional Campaign Committee ("DCCC"), he intended to
2 run a "serious" campaign for the Democratic Party nomination in 2016.⁸ In contrast to his
3 previous races, LaVergne began to organize a campaign and interviewed potential consultants.⁹
4 During March and April 2016, LaVergne held conference calls and meetings with a campaign
5 manager, Sean Gagan, a fundraiser, Stephanie Mellinger, and a compliance
6 professional, Kathryn Jayne Drennen.¹⁰ These consultants spent several weeks organizing
7 LaVergne's campaign, but they stopped in April 2016 when LaVergne suddenly ended all
8 communication with them.¹¹ The Committee did not pay the consultants for their efforts. At
9 least two consultants claim that the Committee failed to pay bills for their services.¹²

10 LaVergne stated that in early April, his contact at the DCCC told him that the party could
11 not clear the field of other primary candidates, and that he could not rely on the expected support

⁸ Committee Resp. at 2.

⁹ *Id.* at 2.

¹⁰ Committee Resp. at 2, 5; Drennen ROI at 2. The March 8, 2016 cover letter by which LaVergne transmitted his Statements of Candidacy and Organization to the Commission was copied to various persons associated with LaVergne's campaign, including Gagen (with the title National Executive), Mellinger and Drennen. *See* Statement of Organization, Frederick John LaVergne for Congress, Cover Ltr. (Mar. 8, 2016).

¹¹ *Id.*; *see also* Mellinger ROI at 1; Drennen ROI at 1.

¹² Drennen ROI at 1, Attach. 1. Kathryn Drennen of Midwest Compliance Group claims that LaVergne owes her \$2,700 for her services. *See* Drennen ROI at 1. Sean Gagen of Grassroots Solutions claims that he served as a campaign manager for the Committee for approximately three weeks, and is owed the pro-rated portion of a \$6,000 monthly retainer plus expenses of \$1,492. *See* E-mail from Sean Gagen, Grassroots Solutions, to Kimberly Hart, OGC (July 25, 2018). We also contacted Stephanie Mellinger of The Mellinger Group who provided fundraising services to the Committee regarding any unpaid debts. She indicated that under the terms of her contract, no payment was owed because she did not reach a fundraising goal of \$15,000. *See* Mellinger ROI at 2. Although Drennen stated that the Committee also failed to pay an invoice of an unknown amount from a vendor called NGP VAN, that company informed us that it would not voluntarily provide information about any outstanding debt without the consent of the Committee. *See* E-mail from NGP VAN to Kimberly Hart, OGC (July 25, 2018).

1 from party organizations.¹³ LaVergne stated that without this support, his path to victory was
2 unclear, and he decided not to raise or spend more than \$5,000 to avoid reporting obligations.¹⁴

3 LaVergne represents that that the campaign continued without ever purchasing lawn
4 signs, radio or television ads, and that he advertised exclusively through social media and face-
5 to-face campaigning.¹⁵ After receiving notification of the Commission's reason-to-believe
6 findings, LaVergne filed a "Campaign Notice" with the Clerk of the U.S. House of
7 Representatives affirming that he did not raise or spend in excess of \$5,000.¹⁶

8 **B. The Committee's 2016 Cycle Financial Activity**
9

10 The Committee's April 2016 Quarterly Report, which was the only report filed, indicates
11 that the Committee received \$600 during the first quarter of 2016.¹⁷ LaVergne and the
12 Committee have represented that they received less than \$5,000 in contributions during 2016.¹⁸
13 The Committee provided copies of bank records for three accounts established for the
14 Committee during 2016.¹⁹ The records show that the Committee deposited a total of \$1,024.52

¹³ Committee Resp. at 3.

¹⁴ *Id.* at 5.

¹⁵ *Id.* See also Frederick John LaVergne for Congress-Home-Facebook
<https://www.facebook.com/FrederickJohnLaVergneForCongress/> (last visited Aug. 21, 2018).

¹⁶ See Committee Resp., Attach.

¹⁷ See April 2016 Quarterly Report, Frederick John LaVergne for Congress (Apr. 14, 2016).

¹⁸ Committee Resp. at 1.

¹⁹ Committee Resp. #2, Attachs. A, B, and C.

1 into the three bank accounts during 2016 (\$604.36 in an account at Beneficial Bank, \$370.16 into
2 an Andrews Federal Credit Union account, and \$50 into an Oceans First bank account).²⁰

3 As referred to above, the Commission found that the Committee used office space in
4 Lacey Township and Willingboro, New Jersey, but failed to report any disbursements for rental
5 payments.²¹ The Committee acknowledges that it did not pay to use the office space, but it says
6 it made only minimal use of the different spaces and that value of that use was *de minimis*.²²

7 On March 14, 2016, LaVergne, on behalf of the Committee, signed a lease for a
8 campaign office in Lacey, New Jersey ("Lacey Road office"), at a rate of \$1,400 per month.²³
9 The Committee used the office space for a short period—which the Committee estimates as two
10 weeks, but the property owner estimates as two months—and then abandoned the space without
11 paying anything to the owner.²⁴ The Committee contends that after it became clear that the

²⁰ *Id.*

²¹ Compl. at 1 (July 11, 2016). The Complaint includes copies of three Facebook posts referencing LaVergne's campaign offices. Compl., Exhs. A, B, and C. The first is a photograph purportedly posted to LaVergne's Facebook page on March 18, 2016, which lists a campaign office address at 1044 Lacey Road – Suite 8, Lacey Township, New Jersey 08731. *Id.* The second post is from LaVergne, dated April 15, 2016, referring to the "official" opening of the Committee's "Burlington County Campaign office" in Willingboro, New Jersey, two weeks later, but also mentioning that the Committee used the office space the night before for a Presidential Debate Watch Party. *Id.* The third is an April 13th post stating that LaVergne and another candidate would host a Presidential Debate Watch Party the next night at LaVergne's campaign office located on Penny Packer Drive in Willingboro, New Jersey. *Id.*

²² See Committee Resp. #3 at 1.

²³ See E-mail from Alan Baker, Pres., BaCorp Building Group, to Kimberly Hart, OGC (Apr. 9, 2018) ("Lease Agreement"); E-mail from Alan Baker, Pres., BaCorp Building Group, to Kimberly Hart, OGC (Apr. 9, 2018) ("Rental Invoice E-mail"). The lease agreement was signed by both parties on March 11, 2016. The lease agreement provides that LaVergne would occupy the rental space between March 1, 2016, and June 30, 2016, at \$1,400 per month. *Id.* LaVergne's agreement to extend the lease from June 30, 2016, to November 2016 at a rate of \$2,200 per month was conditioned upon his winning the primary election. *Id.* The first month's rent was to be due and payable on April 15, 2016. *Id.*

²⁴ LaVergne initially claimed that this office was intended for Ocean County Freeholder candidates Scott Neuman and Scott Caprioni, and he would sublet a portion of the space (with a separate entrance) for use during the general election. Committee Resp. at 5. He further claims that he used the office space for a "few hours over a four day period" leading up to the primary election. *Id.* According to LaVergne, once Neuman and Caprioni both lost

1 DCCC would not provide support, the lease was cancelled by mutual consent approximately two
2 weeks after it took possession, and that the value of its use was *de minimis*.²⁵ The property
3 owner denies that he consented to cancel the lease; he maintains that LaVergne abandoned the
4 property sometime in mid-May, not late March 2016.²⁶ The property owner states that LaVergne
5 owes \$6,231 in back rent and late fees.²⁷

6 At different times later in 2016, the Committee also had two campaign offices in
7 Willingboro, New Jersey: one on Penny Packer Drive ("Penny Packer Drive office") and the
8 other on Rancocas Road ("Rancocas Road office").²⁸ LaVergne secured the Penny Packer Drive
9 office after the primary election in June 2016 and the Rancocas Road office in October 2016.²⁹
10 LaVergne asserts there were no written leases for these properties; instead, he agreed to make
11 repairs in lieu of rental payments.³⁰ According to LaVergne, neither he nor the Committee ever
12 used or occupied the Penny Packer Drive office because he could not obtain a certificate of

their primary elections, the Lacey office was abandoned and he never paid any money for the limited used of the space. *Id.* This initial response did not reveal that LaVergne signed the lease. *Id.*

²⁵ Committee Resp. #4 at 1.

²⁶ See Baker Article.

²⁷ See Rental Invoice E-mail.

²⁸ Committee Resp. at 5.

²⁹ *Id.* at 4-5.

³⁰ Committee Resp. #3 at 1.

1 occupancy.³¹ LaVergne claims that the Committee only used the Rancocas Road office for 30
2 days prior to the general election.³²

3 **IV. ANALYSIS**

4 **A. Law**

5 An individual becomes a candidate under the Act if: (a) such individual receives
6 contributions or makes expenditures in excess of \$5,000, or (b) such individual gives his or her
7 consent to another person to receive contributions or make expenditures on behalf of such
8 individual and if such person has received such contributions or has made such expenditures in
9 excess of \$5,000.³³ The term "contribution" includes any gift, subscription, loan, advance, or
10 deposit of money or anything of value made by any person for the purpose of influencing any
11 election for federal office.³⁴ The Commission's regulations provide that "anything of value"
12 includes all in-kind contributions, including the provision of goods or services without charge or
13 at a charge less than the usual and normal charge for such goods or services.³⁵ An in-kind
14 contribution shall be reported as a receipt in accordance with section 104.3(a) and as an
15 expenditure in accordance with section 104.3(b).³⁶ A written contract, promise or agreement to

³¹ However, on April 13, 2016, LaVergne claims that this office was used once by the Hillary for America committee for a "Presidential Debate Watching Party." Committee Resp. at 4-5. He further claims that the Hillary for America campaign asked to use the office space despite the lack of working bathrooms and a valid certificate of occupancy, and he was listed as the host on social media. *Id.* According to LaVergne, the space was only used for 3 hours at a *de minimis* value of \$60.00. *Id.*

³² Committee Resp. #4 at 1.

³³ 52 U.S.C. § 30101(2).

³⁴ *Id.* § 30101(8).

³⁵ 11 C.F.R. § 100.52(d)(1).

³⁶ *Id.* § 104.13(b); *see also* Conciliation Agreement, MUR 6463 (Antaramian) (May 4, 2012).

1 make an expenditure is an expenditure as of the date such contract, promise or obligation is
2 made.³⁷

3 The Act and Commission regulations require the treasurer of a political committee to file
4 reports of receipts and disbursements.³⁸ A debt or obligation over \$500, including a loan, written
5 contract, written promise or written agreement to make an expenditure, shall be reported as of
6 the date on which the debt or obligation was incurred except that any obligation incurred for rent,
7 salary, or other regularly recurring administrative expenses shall not be reported as a debt before
8 the payment due date.³⁹ A political committee shall report a disputed debt in accordance with 11
9 C.F.R. § 104.3(d) and 104.11 until the dispute is resolved if the creditor provided something of
10 value to the political committee.⁴⁰

11 **B. Analysis**

12 While the available record indicates that LaVergne and the Committee accepted less than
13 \$5,000 in monetary contributions and made less than \$5,000 in monetary disbursements, the
14 evidence indicates that LaVergne and the Committee arranged for and received office space and
15 campaign services worth more than \$5,000.⁴¹ Accordingly, LaVergne was a candidate under the
16 Act, and the Committee was required to report all its receipts and disbursements.

³⁷ 11 C.F.R. § 100.112.

³⁸ 52 U.S.C. § 30104(a)(1), (b); 11 C.F.R. §§ 104.1(a), 104.3(b).

³⁹ *Id.* § 104.11(b).

⁴⁰ 11 C.F.R. § 116.10(a). The disclosure should include any amounts paid to the creditor, any amount the political committee admits it owes and the amount the creditor claims is owed. *Id.*

⁴¹ It is possible that the Committee also had miscellaneous campaign expenses paid by the candidate and/or volunteers that would have been reportable as in-kind contributions to and disbursements by the Committee. *See* 11 C.F.R. §§ 100.52, 100.111.

1 The Committee acknowledges that it contracted with campaign consultants who worked
2 to organize LaVergne's campaign.⁴² These consultants presented information that the
3 Committee owes them more than \$5,000.⁴³ In addition, there is evidence that the Committee
4 owes the Lacey Road property owner rent for its use of that office. The Committee contends that
5 it used the property for only a few weeks, but the property owner contends that the Committee
6 owes back rent and late fees of \$6,231, and supported that contention with a written lease signed
7 by LaVergne.⁴⁴ Thus, LaVergne and the Committee appear to have received in-kind
8 contributions and made expenditures that exceeded the \$5,000 threshold. Accordingly,
9 LaVergne was a candidate under the Act, and the Committee had an obligation to report its
10 receipts and disbursements.

11 Notwithstanding this conclusion, the Committee's total activity appears to have been less
12 than \$15,000, and we do not believe that it would be a prudent use of the Commission's
13 resources to pursue this matter further.⁴⁵ Accordingly, we recommend that the Commission take
14 no further action as to Frederick John LaVergne for Congress and Leonard Marshall in his
15 official capacity as treasurer.⁴⁶ We also recommend that the Commission issue a letter of
16 caution, and close the file in this matter.

⁴² See Statement of Organization, Frederick John LaVergne for Congress, Cover Ltr. (Mar. 8, 2016).

⁴³ As noted above, Drennan contends the Committee owes \$2,700, and Gagen contends the Committee owes about \$5,000, which consists of the prorated portion of his \$6,000 monthly retainer, plus \$1,492 in expenses.

⁴⁴ In addition, it appears that the Committee occupied the Rancocas Road office for a month, incurring further expenses.

⁴⁵ The Commission has exercised its prosecutorial discretion and dismissed allegations relating to committees that failed to file timely Statements of Organization and disclosure reports after receiving and spending larger amounts than the amounts at issue in this matter. See Factual and Legal Analysis at 6-7, MUR 7261 (Levi for Colorado) (June 7, 2018); Factual and Legal Analysis at 11, MUR 6999 (Larsen) (Oct. 25, 2016).

⁴⁶ See *Heckler v. Chaney*, 470 U.S. 821 (1985).

IV. RECOMMENDATIONS


1. Take no further action as to Frederick John LaVergne for Congress and Leonard Marshall in his official capacity as treasurer;
2. Issue a letter of caution;
3. Approve the appropriate letters; and
4. Close the file.


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8.22.18

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